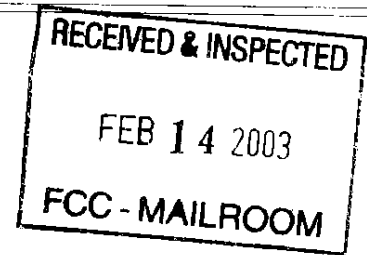


DOCKET FILE COPY ORIGINAL



February 10, 2003

Federal Communications Commission  
Office of the Secretary  
Washington, D.C.

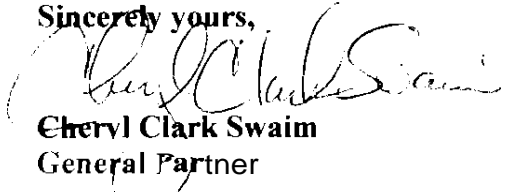
Re: SkyWay Broadcasting, Ltd., WXUS, Fort Kucker, AL  
Petition for Rulemaking

Enclosed please find my Petition for Rulemaking and Engineering Statement, along with four copies. I had mistakenly followed the wrong instructions and had sent this to Pittsburg, PA with a check. This was returned with notice that form 301 was missing. That is why the original is stamped FCC/Mellon Feb 3, 2003.

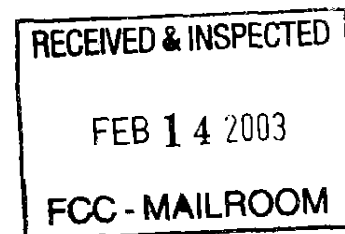
Thanks to Rolanda Smith in your office, I found out the way to properly apply for the rulemaking and get the process started.

Thanks for your help.

Sincerely yours,

  
Cheryl Clark Swain  
General Partner

No. of Copies rec'd 04  
List ASODE 4  
03-17



BEFORE THE  
**Federal Communications Commission**

WASHINGTON, D. C. 20554

In re:

Amendment of Section 73.202(b) )  
of the Commission's Rules. )  
FM Table of Allotments, )  
(Fort Rucker, Alabama) )

RM-\_\_\_\_\_

To: The Commission

**PETITION FOR RULEMAKING**

Skyway Broadcasting Ltd. ("Skyway"), licensee of WXUS-FM, Channel 263A, by its General Partner, hereby petitions the Commission to amend the FM Table of Allotments, Section 73.202(b) of its rules, 47 C.F.R. Section 73.202(b) as follows:

	<u>Present</u>	<u>Proposed</u>
Fort Rucker, Alabama	263A	263C3
Tifton, Georgia	262C	262CO

This petition hinges on the Commission's designation of Tifton, Georgia's Peterson Broadcasting Corporation current Class C as a Class CO. WOBB is currently a Class C at 306.3 HAAT(m) and 412.1 HAMSL(m). The designation of WOBB as 262CO would make no change in its current broadcast facilities. The minimum separation for a 263C3 to a 262C is

176 km.. The designation of 262C to 262CO would reduce the minimum separation to 163 km, thereby enabling Fort Rucker to grow from a Class A to a C3.

Additionally, Skyway requests the Commission to simultaneously modify its license to specify operation on the newly allocated Channel 263C3. In support of this petition, the following is show :

Skyway is presently licensed to operate on Channel 263A in Fort Rucker, Alabama. Skyway requests the Commission to modify its license in this proceeding to specify operation on Channel 263A. Recent changes in the rules now permit the Commission to effectuate Skyway's requested facilities upgrade without opening up this proceeding to competing applications.

In a Report and Order in MM Docket No. 83-1148,56 1253(1984), recon. denied, 59 RR2d 1466(1986), the Commission first amended Section 1.420(9) to permit an FM station to upgrade to a newly allotted superior class of channel in the course of a rulemaking proceeding, provided at least one additional equivalent channel is available to accommodate other parties expressing interest in the new channel. This policy was adopted to encourage licensees to maximize spectrum usage by upgrading their facilities to a higher class of adjacent or co-channel frequency. In MM Docket No.85-313, the Commission liberalized Section 1.420(9) of the rules to permit stations to effectuate channel upgrades in the course of rulemaking proceedings even though there are no equivalent higher class channels available for third party expressions of interest. Report and Order, 60 RR2d 114,118(1986). The Commission found that its policy of requiring another equivalent higher class channel was restricting channel upgrades because in most cases the higher class channel was not available to others. **As a**

result, licensees either had to go through the comparative hearing process or withdraw their requests. Because the co-channel, as well as the three immediately adjacent channels, are not technically available for application in the licensee's community, the Commission determined that it would be in the public interest to permit licensees to maximize their facilities where technically feasible without being subject to the comparative hearing process.

Skyway's petition is fully consistent with Section 1.420(9) of the rules as amended in 1986. First, Skyway has provided as Attachment 1, an engineering statement prepared by H. J. Mizell, Architect, Skyway's consulting Engineer. The engineering statement demonstrates that Skyway's facilities can be upgraded from Channel 263A to Channel 263C3 consistent with the Commission's minimum separation requirements in Section 73.207 of the rules. A maximum Class C3 operation can provide city grade 70 dbu) service to all of Fort Rucker from the desired location.

Second, because Channel 263C3 is the same channel of Skyway's presently licensed Channel 263A, the Commission can modify Skyway's license to specify operation on the newly allotted channel 263C3-without entertaining competing applications. In Docket 85-313, the Commission noted that the same channel presently is not available to others and thus qualifies for automatic upgrading.

Third, under the revised Section 1.420(9), an equivalent higher class channel is not required to be available for third party expressions of interest. Skyway's requested upgrade would also be consistent with the Commission's action in Valdosta Georgia, MM Docket No. 86-349, Reoort and Order, DA 87-795, (released June 29, 1987). In Valdosta, the Commission

approved the substitution of Channel 239C2 for Channel 240A and the modification of the licensee's facilities to specify operation on the higher class adjacent channel.

Finally, the public interest would benefit from the Substitution of Channel 263C3 for Channel 263A because the region will benefit from the resulting expanded radio service.


If the Commission issues a Report and Order in this proceeding as requested above, Skyway will promptly modify its licensed facilities to operate on the new channel.

### CONCLUSION

Skyway's petition **to** upgrade **to** the same channel is fully within the parameters of both Section 1.420(g) and the Commission's decision in Valdosta, supra. Thus, Skyway's license **may** be modified to specify operation on Channel 263C3 in the course of this proceeding without opening the allocation to competing applications. Therefore, **in** consideration of the foregoing, Skyway respectfully requests the Commission to issue a Notice of Proposed Rulemaking, proposing to amend the FM Table of Allotments as shown above and to simultaneously modify Skyway's license to specify operation on Channel 263C3

Respectfully submitted,

SKYWAY BROADCASTING Ltd.

By   
Cheri Clark  
Its President

Cheri Clark  
**PO Box 1126**  
Daleville, AL 36322  
(334) 598-3374  
January 20, 2003

**EXHIBIT E**  
**ENGINEERING STATEMENT**  
**IN SUPPORT OF A PETITION FOR RULEMAKING**  
**TO CHANGE THE ASSIGNMENT OF CHANNEL 263A**  
**AT FORT RUCKER ALABAMA TO CHANNEL 263C3**

This statement was prepared on behalf of Skyway Broadcasting Ltd. licensee of FM broadcast station WXUS-FM Fort Rucker, Alabama. It supplies technical information in support of a petition to change the Channel assignment of 263A at Fort Rucker, Alabama to Channel 263C3.

An allocation study of Channel 263C3 at coordinates N Latitude 31°12' 0" by W Longitude 85° 29' 54" was conducted and the results are tabulated on the study attached to this statement as "Allocation Study". The study demonstrates that WXUS-FM can relocate to a site at the coordinates listed above and upgrade to a Class C3 operation on Channel 263C3 meeting all separation requirements of Section 73.207 of the Commission Rules.

A further study of the proposed site indicates that a maximum Class C3 operation can provide 70 dBu City Grade service to all of Fort Rucker from the desired location. Please note there are no coordinates for Fort Rucker. The available coordinates are for Cairns **Army** Air Field per the FAA. The coordinates are 31-16-0;85-44-0, 23.573 **km** from the proposed site. Using accepted rounding practices, the separation becomes 23.2km thus satisfying the community coverage contour

Respectfully submitted,  
H. J. MIZELL, ARCHITECT

By   
H. JACK MIZELL

**ALLOCATION STUDY  
PETITION TO UPGRADE THE ASSIGNMENT  
OF CHANNEL 263A, FT. RUCKER,  
ALABAMA, TO CHANNEL 263C3**

Channel!	Separation in km			
<u>Class</u>	<u>Call</u>	<u>Location</u>	<u>Actual</u>	<u>Reauired</u>
262A*	WAOQ	Brantley, AL	88.683	89
262CO**	WOBB	Tifton, GA	167.76	163
263C	WIIMA-FM	Anniston, AL	271.61	237
262C3	WOYS	Apalachicola, FL	172.82	153
264C3***	WMRZ	Cuthbert, GA	98.661	99
265C3	<b>WJAQ</b>	Marianna, FL	51.673	<b>43</b>
266AA	WZTZ	Elba, AL	49.705	42
266A	WFNU	Repton, AL	172.01	42
266A	WTGA-FM	Thomaston, GA	210.7	42

**North Latitude: 31°12' 0"**  
**West Longitude: 85°29' 54"**

NOTES: 1. Required separations specified In Section 73.207 of the FCC Rules.

2. Actual separations calculated in accordance **with** Section 73.208

\*3. The WAOQ actual separation is 88.683 km. Using accepted rounding practices, the separation becomes 89 km thus satisfying the spacing requirements.

\*\*4. WOBB Tifton, Ga is currently 262C. This petition requests that Tifton, Ga. be designated 262CO WOBB's transmitting tower is 306.3 HAAT(m) 412.1 HAMSL(m) at 31-25-49, 83-45-22.

\*\*\*5. The WMRZ actual separation is 98.661 km. Using accepted rounding practices the separation becomes 99 km thus satisfying the spacing requirements.

Prepared by  
H. Jack Mizell  
Ozark, AL  
January, 2003